

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1054 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

SHANTILAL MAKANJI NAIK

Versus

LALSINH KESHRSINH THAKORE

Appearance:

Mr.VJ Desai for Petitioner

NOTICE SERVED for Respondent No. 1

MR SH SANJANWALA for Respondent No. 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/02/2000

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act, arising out of the following facts :

The Suit for eviction and recovery of arrears of rent, etc. was filed by the respondent against the revisionist on the ground of tenant being in arrears of rent for more than six months on the date of the Notice and he did not pay the same after service of notice. Another ground for eviction was that the suit accommodation was reasonably and bonafide required by the plaintiff landlord who is respondent in this revision. The third ground was that the suit premises was not used without reasonable cause for the purpose for which it was let out for a continuous period of six months immediately proceeding the date of the suit. The other ground that the tenant revisionist has acquired sufficient alternative accommodation for his purpose was not taken in the plaint but when the Appeal was filed it was raised there. The appellate Court allowed amendment in the plaint and remitted the additional issue to the trial court. Dispute of standard rent was also raised.

2. The suit was resisted by the tenant denying these averments.

3. The Suit was dismissed by the trial Court, but in Appeal, as stated earlier, on the motion of the landlord respondent issue was suggested to be framed by the trial Court and the matter was remitted to the trial Court for finding on the remitted issue. The trial Court returned the finding on the remitted issue that the tenant revisionist has acquired sufficient suitable alternative accommodation for his purpose and as such the suit for eviction, recovery of arrears of rent, etc. was decreed. It is, therefore, this revision.

4. The learned Counsel for the revisionist has drawn my attention only to the findings on the additional issue framed by the appellate Court under which the landlord took the case under Section 13(1)(1) of the Bombay Rent Act. Learned Counsel for the respondent however argued that on other grounds also the suit for eviction could be decreed because there was non-compliance of Section 12(3)(b) of the Act. However, availability of benefit of Section 12(3)(b) of the Act to the tenant need not be discussed in view of the fact that the learned Counsel for the revisionist assailed only the findings of the Appellate Court as well as of the trial Court that the defendant has acquired suitable residential accommodation for his personal use.

5. Both the courts below have correctly appreciated oral and documentary evidence on this point and have returned concurrent findings which hardly require any

interference in this revision. Unless concurrent findings of fact are found to be perverse or based upon inadmissible evidence such findings cannot be reversed in revision simply because the revisional court wishes to take different view from the material on record. Yogeshchandra Lalsing Thakor has stated that the defendant acquired flat in Gujarat Housing Board, Khatodara colony, Gandhinagar Housing Society, Surat in Block No.2. The flat No. of this witness is 32. Defendant's admission is that the acquired flat stands in his name. However, he tried to take shelter behind Benami transaction that it belongs to one Induben. So far as the size of the accommodation is concerned the disputed accommodation has an area of 390 sq.ft. whereas the construction of new flat is in the area of 400 sq.ft. Thus, practically the area under construction in the two accommodations is the same and as such it cannot be said that the accommodation, which has been acquired by the defendant, is in any way insufficient to accommodate him and his family members. There are four persons in the family of the defendant - revisionist. If they could be accommodated in the disputed accommodation there is no reason to presume or believe that these four persons cannot be suitably accommodated in the new flat. It is not the case of the revisionist that the disputed accommodation is insufficient to accommodate his family members and for this purpose he has acquired other flat. Plea of Benami transaction was disbelieved by the two courts below. Induben is said to be the owner of this flat. This was subsequent thought of the defendant after categorical admission made earlier that he is the owner of the new flat. Induben is not a family member of the revisionist. She happened to be the friend of his cousin. Other conduct of the revisionist was also taken into account by the Appellate Court regarding failure of the revisionist to file Affidavit making declaration that he does not have any accommodation in the city. Rules of Housing Board regarding transfer of such flat were also considered by the appellate Court. Statement of Dineshchandra Chunilal Vaidya, witness of the plaintiff was also considered by the Appellate Court and from his statement also the appellate Court found that the case of the plaintiff stood corroborated. This factual finding, to my mind, does not suffer from any illegality or perversity. Statement in rebuttal given by the defendant in these circumstances can not turn the scale in his favour.

6. No other point was pressed by the learned Counsel for the revisionist. As such it is not necessary to discuss in this revision whether the tenant is entitled

to the benefit and protection of Section 12(3)(b) of the Rent Act.

7. In view of aforesaid discussions, I do not find any merit in this revision which is hereby dismissed with no order as to costs.

sd/-

Date : February 18, 2000 (D. C. Srivastava, J.)

sas